(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 463 OF 2001

(CRIMINAL APPEAL U/S 374 (2) OF THE CR.P.C.)

APPELLANTS (In Jail) :- (1) Sonaram Patel,
Son of Bhangi Patel,
Aged about 60 years,
Resident of Village Dhardei,
Police Station Sheorinarayan,
District: Janjgir,
Chhattisgarh.

(2) Meenabai alias Naradheen,
Wife of Sonaram,
Aged about 37 years,
Resident of Village Dhardei,
Police Station Sheorinarayan,
District Janjgir,
Chhattisgarh.

Filed on 24-5-2001 (2008)
by Shri Prashant Mishra Advocate
R. to AR

V E R S U S

RESPONDENT :- The State of Chhattisgarh.

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

(57)

XI-HC-22

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मामला क्रमांक CRA No. 463 **सन्** 2001

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. D.R. DESHMUKH, JJ.

6-10-2006

Mr. J.K. Shastri, counsel for the appellants.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19th May 2001 passed by the Additional Sessions Judge, Janjgir in Sessions Trial No.233/99 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 302 and 450 of the I.P.C. sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.200/-, and to undergo R.I. for 3 years & to pay a fine of Rs.200/-, respectively.

Case of the prosecution, in brief, was that on 21-3-99 when Firatram and his wife were not present in the house and their daughters namely Janki and Manki were present in the house, the accused/appellants came to their house and kidnapped Manki Bai aged about 10 years. On return of

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Firatram at about 9.30 p.m. to his house, Janki informed him that the accused/appellants have kidnapped Manki Bai, on which Firatram informed the villagers. Manki Bai was searched in the village. Next day morning the body of Manki was seen lying near Shishu Mandir. Firatram went to that place and saw that there were injuries on the body of Manki Bai. There was a cloth in the mouth of Manki Bai. Therefore, a merg intimation Ex.-P/16 was given by Firatram to the Police Station Shivrinarayan. Based on that, First Information Report Ex.-P/15 was registered for commission of offence under Sections 450 and 302/34 of the I.P.C. The Investigating Officer left for place of occurrence, after giving notice Ex.-P/1 to the Panchas, prepared inquest report Ex.-P/2 of the body of Manki. He seized one bolder, plain soil and blood stained soil from the place of occurrence under Ex.-P/3. The clothes of the deceased were seized under Ex.-P/4. The site plan (Ex.-P/7) was prepared by Patwari. The body of Manki was sent for postmortem examination to the Government Hospital, Shivrinarayan under Ex.-P/8. Dr. Ravi Shankar Prabhakar (PW-7) conducted the postmortem, prepared postmortem report Ex.-P/9 in which he opined that cause of death was grievous injury to skull, brain and haemorrhage. Death was homicidal.

After completion of the investigation, charge sheet was filed against the accused persons in the Court of Judicial

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Magistrate, 1st Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilapsur from where learned Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused persons examined 14 witnesses. Learned Additional Sessions Judge recorded the statements of the accused persons under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that on account of animosity with Firatram they have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

Mr. Shastri has not disputed the homicidal death of deceased Manki Bai. Apart from that, Dr. Ravi Shankar Prabhakar (PW-7) who conducted the postmortem on the body of Manki Bai noticed following injuries on her body:-

(i) Lacerated wound on the temporal region in horizontal direction in the size of 7 cm x 1 cm x scalp deep.

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(ii) Hidden contusion on the left temporal region in the size of 8 cm x 6 cm.

(iii) Abrasion on posterior aspect of right elbow joint in the size of 1 cm x 1½ cm.

(iv) Abrasion on left elbow joint posterior in the size of 1 cm x 1 cm.

(v) Fracture of left temporal bone.

Cause of death was haemorrhage and coma. The nature of death was homicidal. The head injury was sufficient in the ordinary course of nature to cause death. In view of this medical evidence, it is established that the nature of death was homicidal.

As far as involvement of the accused/appellants in commission of crime is concerned, the prosecution case rests on the ocular evidence of PW-11 Janki Bai who has stated that in the fateful night of 21-3-99 when she along with deceased Manki were at their residence, the accused/appellants came to their residence and kidnapped Manki Bai. On her objection, accused Meenabai slapped her. Thereafter, she went for sleep. In the night at about 9.30 p.m. when her father returned to the house, she disclosed this fact to him. Second ground is that there was old animosity between accused Sonaram and Firatram, father of the deceased.

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Mr. Shastri argued that perusal of the evidence of PW-1 Guddu Sahu, PW-2 Kashi Prasad Sahu, even the evidence of PW-11 Janki reveals that in the evening Manki Bai herself left the house, only when Firatram returned to his house, a search was made about Manki Bai. Even some persons of Sahu Samaj were also informed, but in the night, whereabouts of Manki Bai could not be known. In the morning, the body of Manki Bai was seen near Shishu Mandir. He also submitted that on account of old animosity between Firatram and accused Sonaram, a false case has been foisted upon the accused persons.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by Mr. Shastri we have perused the evidence of above witnesses. After perusal of the evidence, we are of the considered opinion that the argument advanced by Mr. Shastri has merit. The evidence of star witness of the prosecution namely PW-11 Janki does not inspire confidence of the Court to the extent that the accused/ appellants kidnapped deceased Manki Bai from the house of Firatram in the presence of Janki Bai. In para-20 of cross-examination of her evidence, she has categorically stated that she informed her father that in the evening Manki Bai had left the house, thereafter, she had not returned. She asked her

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father 'let us go in search of Manki Bai'. Thereafter, her father took her to the house of Nandu where a meeting of community persons was convened. They were informed that Manki Bai is not at residence, Sonaram & Meena Bai might have kidnapped her. Before going to the meeting place, she along with her father went to the house of Gorelal. On enquiry from Gorelal, he informed that Manki Bai was not there. "We made a search in our house also." Perusal of para-4 of the evidence of this witness further shows that when a question was put to her that 'after return of your father what information was given by her to him', this witness remained silent for 3 minutes, thereafter on the request of Additional Public Prosecutor, he was allowed to put leading question to this witness. Even in para-5, she has categorically stated that it is correct to say that after giving information to her father, they went to the villagers and searched Manki Bai.

PW-1 Guddu Sahu has stated that a meeting of Sahu Samaj was convened in the house of Nandu Sahu. Firatram informed them that his daughter is not at his house, at that time, elder daughter of Firatram was with him. In cross-examination, this witness has stated that they enquired from the elder daughter of Firatram who was with Firatram about whereabouts of her younger sister, then she disclosed that her younger sister is not at residence. She had gone somewhere

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else. It is correct to say that younger daughter of Firatram was a weak mind girl and she was not able to understand things properly.

PW-2 Kashi Prasad Sahu in para-3 of his examination-in-chief has stated that he was Up-Sarpanch of the village and in the fateful night he was sleeping in his house. At about 12 in the mid night Firatram and 2-4 other persons came to his house. On enquiry, Firatram said that someone has kidnapped his daughter. He enquired from him as to who has kidnapped his daughter, on which he disclosed that Sonaram and Meena Bai @ Naradheen have kidnapped, on which I abused Firatram as to why they are not going to the house of Sonaram to enquire about the whereabouts of his daughter, on which Firatram replied that in the night they would not go to the residence of Sonaram, thereafter, those persons along with Firatram left his house. In para-4, he has stated that it is correct that there was some dispute between Firatram and Naradheen. In para-5 of cross-examination, he has stated that on insistence by the persons who were with Firatram, he enquired from Janki Bai about the whereabouts of her sister, on which she disclosed that when in the evening they were busy in cooking the meal, her sister Manki left the house and thereafter she did not return.

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Therefore, the above evidence of PW-11 Janki, PW-1 Guddu Sahu and PW-2 Kashi Prasad Sahu, who was very close to Firatram, shows that in fact, Manki left the house in the evening, when she did not return in the night only after return of Firatram to his house, meeting of the society was convened and a search was made in order to find out her whereabouts that is why before going to the meeting place, Firatram and his daughter Janki went to the house of Gorelal in search of Manki Bai, as family members of Firatram were frequently visiting the house of Gorelal. Had the accused persons kidnapped Manki in the presence of PW-11 Janki, then where was the necessity to search the whereabouts of Manki in the house of Gorelal and other villagers?

The million dollar question is when it was known that Sonaram and Meenabai had kidnapped Manki Bai and so many villagers had assembled on the request of Firatram, then why they had not visited the house of the accused persons to enquire about the whereabouts of Manki Bai. It is true that relations between accused Sonaram and Firatram were not cordial, as there was animosity between them, some criminal case was also registered against Firatram at the instance of Sonaram, but when so many villagers were present, then they ought to have easily visited the house of the accused persons to enquire about the whereabouts of Manki Bai. This fact itself shows that Manki

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Bai herself left the house and her whereabouts were not known to Firatram that is why a search was made to find out the whereabouts of Manki Bai. In this connection, evidence of PW-12 Khambhan is also relevant even though he has been declared hostile, but he has categorically stated that in the night Firatram along with villagers came to his house and informed him that Manki Bai had left the house and her whereabouts were not known. He along with those persons and Up-Sarpanch made a search, but the whereabouts of Manki Bai could not be known, therefore, they left for their residence. Therefore, evidence of PW-11 Janki does not inspire confidence of the Court that the accused/appellants had kidnapped Manki Bai. The prosecution has failed to establish that the accused persons kidnapped deceased Manki Bai from her residence in the presence of PW-11 Janki. There is no other evidence available on record to connect the accused persons with the crime in question. Of course, there is evidence on record that there was animosity between Firatram and Sonaram and some criminal case was also registered by Sonaram against Firatram for commission of offence under Sections 354 and 322 of the I.P.C., but merely on the ground of animosity between the two, the accused persons cannot be connected with the crime in question unless some legal, convincing and clinching evidence is adduced by the prosecution in order to connect the accused persons with

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the crime in question. Animosity is a factor which can be a ground for commission of offence as well as it can be a ground for false implication. Suspicion howsoever strong, it cannot take the place of proof.

For the foregoing reasons, finding of the trial Court convicting the accused/appellants for commission of offence under Sections 302 and 450 of the I.P.C. cannot be sustained.

In the result, the appeal succeeds. Conviction and sentences imposed upon the accused/appellants under Sections 302 and 450 of the I.P.C. are set aside and they are acquitted of the above charges. As per the record, the accused persons are in custody since 23-3-99, therefore, it is directed that they be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Barve

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